IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 13308 of 2004

Between:

Yeddu Kannam Naidu S/o Sundara Narayana Naidu
Kothur Mandal, Srikakulam District

... PETITIONER

AND

1 Government of Andhra Pradesh Panchaytraj and Rural

Development Department (PTS-II)
Secretariat, Hyderabad rep. by its Principal Secretary,
2 The District Collector (Panchayat Wing) Srikakulam

District, Srikakulam
3 The District Panchayat Officer Srikakulam

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, of Mandamus or any other appropriate writ or direction declaring the order of the 1st respondent passed in G.O.Rt.No.1057 (Panchayatraj and Rural Development -PTS Department dt.20/07/2004 Confirming the order of the 2nd respondent passed in U.letter No.789/03, dt. 23/09/2003 as illegal, arbitrary, and in violation of principles of natural justice.

Counsel for the Petitioner: MR.TADDI.NAGESWARA RAO

Counsel for the Respondent No.: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following Order:

ORDER:

Petitioner who was appointed as Sarpanch of Karlemma Gram Panchayat, Kotturu Mandal, Srikakulam District was served with a show cause notice dated 12-03-2003, pointing out certain financial irregularities and was called upon to submit his explanation as to why cheque power should not be withdrawn from him. On petitioner submitting his explanation to the said show cause notice, cheque power was restored to him on 28-05-2003 by the District Panchayat Officer, Srikakulam. While so, second respondent issued another show cause notice dated 18-06-2003 pointing out 20 lapses and sought for explanation from the petitioner. On submission of the petitioner's explanation, he passed an order under sub-section (6) of Section 249 of the Panchayatraj Act, 1994 (for short "the Act") placing the petitioner under suspension for a period of three months. Aggrieved by the said suspension order, petitioner carried the matter in appeal before the first respondent, who initially admitted the appeal and granted stay and called for the report along with the original records. On receipt of the records and reports, through the impugned G.O.Rt.No.1057 (Panchayatraj and Rural Development – PTS Department, dated 20-07-2004, the Government confirmed the suspension order by vacating the stay granted earlier and dismissing the appeal filed by the petitioner, with a direction to the District Collector to take necessary action for removal of the Sarpanch and to recover all the misappropriated amounts as per rules. Questioning the same, the present Writ Petition is filed.

2. Learned counsel for the petitioner by placing reliance upon a judgment of this Court reported in ***KALARI NAGABHUSHANA RAO V. THE COLLECTOR, PANCHAYAT WING, GUNTUR*** contends that the State Government acting as an appellate

authority exercising the
quasi-judicial power cannot call for the remarks from the District Collector whose order is under challenge and dismiss the appeal.

3. No doubt, in the above case, the Sarpanch was removed for certain irregularities committed by him against which he preferred an appeal, in which the Government called for para-wise remarks on the memorandum of appeal from the District Collector, and on submission of the para-wise remarks along with the report the Government dismissed the appeal which was set aside by this Court holding that the very practice of calling reports and
para-wise remarks on the memorandum of appeal by the
quasi-judicial or appellate authority is not permissible unless specifically provided under statute or the rules framed thereunder, and accordingly allowed the Writ Appeal, setting aside the order passed by the State Government as violative of rules of natural justice and remitted the matter to the State Government to dispose of the appeal preferred by the appellant in the light of the observations made thereunder.

3. Inspite of such practice is deprecated; Government revisional/Appellate authorities are still following the said practice whenever a statutory appeal/revision is filed. In view of the same, the Chief Secretary, Government of A.P. is hereby directed to issue necessary circulars to the authorities stating that particularly when appeals/revisions are filed before the Government, except calling for the records and deciding the matter, the quasi-judicial authority need not call for the report on the appeal/revision filed. In the event, if any such report is called for, necessarily such report should be made available to the parties and soon after hearing the affected parties on the said report, if it is relied, necessary orders should be passed.

4. Be that as it may, since the petitioner was placed under suspension for the irregularities, this Court, instead of going into the merits in dismissing the appeal and remitting the matter,

considered the suspension order in its entirety and is of the opinion that since the regular enquiry is contemplated, now it is restrained to express any opinion over the validity or otherwise of the allegations made in the suspension order. Once grave irregularities are pointed out continuing the petitioner in office will hamper the enquiry. Ends of justice will be met if enquiry is directed to be completed at an early date.

5. In view of the same, second respondent before whom the enquiry is pending and who called for the explanation shall pass necessary orders on the explanation submitted by the petitioner uninfluenced by the order passed by the Government after giving due opportunity to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. If the second respondent fails to pass necessary orders on expiry of three months period, after excluding the period where the appeal was pending before the Government; unless the suspension is extended, petitioner should be restored to his office.

The Writ Petition is accordingly disposed of. No costs.

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(A. GOPAL REDDY, J)

August 24, 2004

MRR/MURTHY

1 Principal Secretary, Government of Andhra Pradesh Panchaytraj and Rural

Development Department (PTS-II), Secretariat, Hyderabad.
2 The District Collector (Panchayat Wing) Srikakulam

District, Srikakulam.
3 The District Panchayat Officer Srikakulam.

4 Two C.C s to the G.P for Panchayatraj and Rural Development, High Court

Buildings, Hyderabad (OUT).

5 Two C.D. Copies.